



City of West University Place

A Neighborhood City

CITY COUNCIL

Susan Sample, Mayor
Vacant, Mayor Pro Tem
Bob Higley, Councilmember
Kellye Burke, Councilmember
Mardi Turner, Councilmember

STAFF

M. Christopher Peifer, City Manager
Alan Petrov, City Attorney
Thelma Gilliam, City Secretary

City Council Meeting Agenda

Notice is hereby given of a workshop and regular City Council meeting of West University Place to be held on **Monday, November 5, 2018** beginning at **5:45 p.m.** in the **Municipal Building** located at 3800 University Boulevard, West University Place, Texas, for the purpose of considering the following agenda items

Note: All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

WORKSHOP (Council Chambers at 5:45 p.m.)

Call to Order
Matters related to notice of this meeting

Agenda Items:

1. Convene into Executive Session (Council Conference Room)

Notice is hereby given that the City Council will convene into executive session in accordance with the following provisions of Chapter 551 of the Texas Government Code:

Section 551.074 – Deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee: (1) Councilmember and (2) City Manager

2. Reconvene Workshop

Matters related to any action resulting from the executive session.

3. Adjourn Workshop

REGULAR MEETING (Council Chambers at 6:30 p.m.)

Call to Order
Pledge of Allegiance
Matters related to the notice of this meeting

Agenda Items:

4. Consider Appointing Member to City Council

Matters related to the appointment of a councilmember to fill the vacancy due to Wayne Franklin's resignation. *Recommended Action: Discuss and take any desired action. **City Council***

5. Public Comments

This is an opportunity for citizens to speak to Council relating to agenda and non-agenda items. If the topic the speaker wishes to address is on the agenda, the speaker can either speak at this time or defer his/her comments until such time the item is discussed. Speakers are advised that comments cannot be received on matters which are the subject of a public hearing once the hearing has been closed. Public comments must be kept relevant to the subject before the Council. The presiding officer shall rule on the relevance of comments. Persons making irrelevant, personal, impertinent, or slanderous remarks may be barred by the presiding officer from further comment before the Council during the meeting. Speakers are required to register in advance and must limit their presentations to three minutes each.

6. Concrete Paving Replacement Project

Matters related to awarding the bid for the City's concrete paving replacement project. *Recommended Action: authorize the City Manager to approve the contract with Teamwork Construction for Concrete Maintenance work at the unit prices in the bid not to exceed budgeted funds. Mr. Dave Beach, Assistant City Manager/Public Works Director* [see Agenda Memo 6]

7. Consent Agenda

All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member requests in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

A. City Council Minutes

Approve City Council Action Minutes October 22, 2018. *Recommended Action: Approve Minutes. Ms. Thelma Gilliam, City Secretary* [see Action Minutes]

B. West U Baptist Church Memorandum of Understanding

Matters related to a Memorandum of Understanding between the West U Baptist Church and the City of West University Place. *Recommended Action: Approve Memorandum of Understanding with the West U Baptist Church. Ms. Susan White, Parks and Recreation Director* [see Agenda Memo 7B]

8. Adjourn

In compliance with the Americans with Disabilities Act, if you plan to attend this public meeting and you have a disability that requires special arrangements, please contact City Secretary Thelma Gilliam at 713.662.5813 at least 24 hours prior to the meeting so that reasonable accommodations can be made to assist in your participation in the meeting. The Council Chambers is wheel chair accessible from the west entrance and specially marked parking spaces are available in the southwest parking area. Special seating will be provided.

I certify that the attached notice and agenda of items to be considered by the West University Place City Council on November 5, 2018 was posted on the Municipal Building bulletin board on November 2, 2018 at approximately 9:00 o'clock a.m.

(SEAL)



Thelma A. Gilliam, TRMC, CMC, City Secretary

AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF WEST UNIVERSITY PLACE, TEXAS

AGENDA OF:	11/5/18	AGENDA ITEM:	6
DATE SUBMITTED:	10/29/2018	DEPARTMENT:	Public Works
PREPARED BY:	P. Walters, Operations Supt.	PRESENTER:	D. Beach, Assist. City Manager/PW Dir.
SUBJECT:	Concrete Paving Replacement Project		
ATTACHMENTS:	Bid Tabulation Repair Location Map		
EXPENDITURE REQUIRED:	\$475,000		
AMOUNT BUDGETED:	2018 Budget \$325,000 2019 Budget \$150,000		
ACCOUNT NO.:	301-7000-85010 Capital Project Fund 325-7000-85010 Transportation Fund		

EXECUTIVE SUMMARY

The 2018 and 2019 Budgets appropriated a total of \$475,000 for replacement of the parking lots for the Public Works Maintenance Yards and to complete point repairs on streets that were not replaced during the Infrastructure Program between 1993 and 2006.

In order to obtain the most favorable pricing, staff opted to bid the Public Works parking lots and 2018 street repairs at the same time with provisions that allowed the City to award additional work using the same unit pricing for additional planned street repairs in 2019.

The City received seven bids from the following reputable contractors:

Teamwork	Brooks	GW Phillips	Total Contract Ltd	A-1 Striping	JM Sales	Jerdon Ent.
\$ 337,722	\$ 338,575	\$ 344,175	\$ 424,750	\$ 446,075	\$ 546,467	\$ 626,235

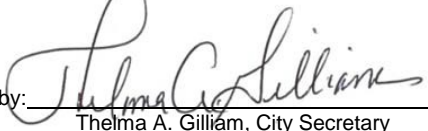
Teamwork Construction Services, Inc. of Houston TX submitted the lowest bid, meets all of the city contractor requirements for this project and has over 35 years' experience in the concrete construction and maintenance field. Currently, they have several ongoing concrete maintenance contracts with other local and county agencies, most notably with League City (\$3 million) and Harris County Precinct 1 (\$1 million).

Because the submitted bid price of \$337,772 exceeds the City's 2018 Budget by \$12,772, Staff utilized Best & Final Offer negotiations to reduce the scope of work to meet the \$325,000 budget. Due to favorable unit pricing staff is recommending that the planned street repairs for 2019 be awarded for a total amount not to exceed \$475,000. The attached map shows the approximate location of the planned street repairs for 2018 and 2019.

The City Attorney has reviewed the contract per legal form.

RECOMMENDATION

Staff recommends that the City Council award the contract in the amount not to exceed \$475,000 for the Public Works Maintenance Yard parking lots and the street repairs in 2018 and 2019 to Teamwork Construction Services, Inc. of Houston TX; and authorize the City Manager to execute the contract.

<p>PROJECT TITLE: Bid 18-09 Concret Paving Replacement</p> <p>BID DATE/TIME: Wednesday, Oct. 3, 2018 @ 09:05 a.m. Municipal Building</p>	<p>I HEREBY CERTIFY THAT THIS IS AN ACCURATE SUMMARY OF ALL PROPOSALS RECEIVED.</p> <p>Prepared by:  Thelma A. Gilliam, City Secretary</p>	<p>BID SUMMARY</p> <p>CITY OF WEST UNIVERSITY PLACE</p>
Company	Total Amount	
JM Sales and Service	\$546,437.50	
A-1 Striping and Paving	\$446,075.00	
GW Phillips Concrete	\$344,175.00	
Teamwork Construction	\$337,722.50	
Jerdon Enterprises	\$626,235.00	
Total Contracting Limited	\$424,750.00	
Brooks Concrete	\$338,575.00	

City of West University Place, Texas

Capital Improvement Program

2018 & 2019 STREET REPAIRS





The City of West University Place

A Neighborhood City

CITY COUNCIL

Susan Sample, Mayor
Vacant, Mayor Pro Tem
Bob Higley, Councilmember
Kellye Burke, Councilmember Mardi
Turner, Councilmember

STAFF

M. Chris Peifer, City Manager
Alan Petrov, City Attorney
Thelma Gilliam, City Secretary

DRAFT

CITY COUNCIL ACTION MINUTES

The City Council of the City of West University Place, Texas, met in a workshop and regular session on **Monday, October 22, 2018**, in the Municipal Building, 3800 University, West University Place, Texas beginning at approximately **6:00 p.m.**

Workshop Agenda was as follows:

Call to Order. Mayor Sample called the meeting to order at approximately 6:00 p.m. in the Council Chambers. Council and Staff in attendance were: Councilmembers Burke, Higley, and Turner, City Manager Peifer, and City Secretary Gilliam

1. Discussion Regarding Appointment of Member to City Council

Matters related to the discussion regarding possible appointment of a councilmember to fill the vacancy due to Wayne Franklin's resignation. *Recommended Action: Discuss and take any desired action.*

Discussion held in closed session per Agenda Item 2.

2. Recess Workshop and Convene Executive Session in Council Conference Room

Notice is hereby given that the City Council will convene into executive session in accordance with the following provisions of Chapter 551 of the Texas Government Code:

Councilmember Turner moved to recess the workshop and convene into executive session in accordance with Section 551.074 of the Texas Government Code, in order to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee: Councilmember. Councilmember Burke seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Higley, Turner

Noes: None

Absent: None

3. Close Executive Session and Adjourn Workshop

Matters related to closing the executive session and adjourning the workshop.

At approximately 6:34 p.m., Councilmember Burke moved to close the executive session; and, with no action to take, moved to adjourn the workshop. Councilmember Turner seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Higley, Turner

Noes: None

Absent: None

Call to Order. Mayor Sample called the meeting to order at approximately 6:00 p.m. in the Council Chambers. Council and Staff in attendance were: Councilmembers Burke, Higley, and Turner, City Manager Peifer, and City Secretary Gilliam, Assistant City Manager/Public Works Director Beach, Parks and Recreation Director White, Finance Director Kalka, Treasurer Nicholson and Communications Director Jett.

Gregg Thompson with Tri-Sports and Richard Wilson, Chair of the Zoning and Planning Commission, were also in attendance.

Pledge of Allegiance: Members of Cub Scout Pack 806 led the Pledge.

Notice of Meeting: City Secretary Gilliam confirmed that the notice of the meeting was duly posted in accordance with the Texas Government Code, Chapter 551.

Regular Meeting Agenda items were as follows:

4. Consider Appointing Member to City Council

Matters related to the appointment of a councilmember to fill the vacancy due to Wayne Franklin's resignation. *Recommended Action: Discuss and take any desired action.* **City Council**

No action taken.

5. Public Comments

This was an opportunity for citizens to speak to Council relating to agenda and non-agenda items.

The following spoke during public comments:

- Brennan Reilly, 3731 Rice, spoke regarding the AT&T rezoning application.
- Alida Drewes, 6112 Fordham, spoke about bullying

6. AT&T Rezone Application

Matters related to the consideration of an ordinance calling for a joint public hearing as proposed by the Zoning and Planning Commission. *Recommended Action: Discuss and take any desired action.* **Mr. Dave Beach, Assistant City Manager/Public Works Director and Mr. Richard Wilson, Chair of the Zoning and Planning Commission**

The following spoke on the AT&T issue:

- Ken Hoffman, 4212 Ruskin, spoke in opposition of the joint public hearing.
- Robert Grossman, 4103 Ruskin, spoke in opposition of the joint public hearing.
- David Cole, 4104 Cason, spoke in opposition of the joint public hearing.
- Eric Darnauer, 4016 Ruskin, spoke in opposition of the joint public hearing.
- Patricia Darnauer, 4016 Ruskin, spoke in opposition of the joint public hearing.
- Terence Lynch, 4112, spoke in opposition of the joint public hearing.
- Anthony Marre, Wilson Cribbs and Goren on behalf of AT&T, spoke to ask for the opportunity to be heard at the joint public hearing.
- Stacy Canady, Assistant Vice President with AT&T, spoke to request the joint public hearing on the zoning request.

- Jennifer Black, 4040 Ruskin, spoke in favor of the joint public hearing.
- Simona Patru, 4024 Ruskin, spoke in opposition of the joint public hearing.

Councilmember Burke moved to approve calling a joint public hearing between the City Council and the Zoning and Planning Commission to hear more information and comments regarding the application. Councilmember Turner seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Turner
Noes: Higley
Absent: None

7. Tri-Sports Memorandum of Understanding

Matters related to a Memorandum of Understanding between Tri-Sports and the City of West University Place. *Recommended Action: Approve Memorandum of Understanding with Tri-Sports.* **Ms. Susan White, Parks and Recreation Director**

Councilmember Higley moved to authorize the City Manager to direct the Parks and Recreation Director to execute the 2019 Memorandum of Understanding between the City of West University Place and the Tri-Sports Association. Councilmember Burke seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Higley, Turner
Noes: None
Absent: None

8. West U Aquatics Club/Piranhas Swim Team Memorandum of Understanding

Matters related to a Memorandum of Understanding between the West U Aquatics Swim Team (DBA Piranhas Swim Team) and the City of West University Place. *Recommended Action: Approve Memorandum of Understanding with the West U Aquatics Swim Team/Piranhas Swim Team.*

Councilmember Higley moved to authorize the City Manager to direct the Parks and Recreation Director to execute the 2019 Memorandum of Understanding between the City of West University Place and the West University Aquatic Club/Piranhas Swim Team. Councilmember Burke seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Higley, Turner
Noes: None
Absent: None

9. West U Baptist Church Memorandum of Understanding

Matters related to a Memorandum of Understanding between the West U Baptist Church and the City of West University Place. *Recommended Action: Approve Memorandum of Understanding with the West U Baptist Church.* **Ms. Susan White, Parks and Recreation Director**

After discussion, there was no action taken. Currently scheduled to be discussed and/or approved at the 11/05/18 meeting.

10. Consent Agenda

All Consent Agenda items were considered to be routine by the City Council and was enacted by one motion.

A. City Council Minutes

Approve City Council Action Minutes for the Special Meeting of October 1, 2018, the Regular Meeting October 8, 2018, and the special meeting of October 15, 2018. *Recommended Action: Approve Minutes. Ms. Thelma Gilliam, City Secretary*

B. Ordinance Dedicating Jennie Elizabeth Hughes Park as Parkland

Matters related to the second and final reading of an ordinance dedicating Elizabeth Hughes Park as a public park. *Recommended Action: Approve ordinance dedicating Elizabeth Hughes Park as a Public Park on the second and final reading. Ms. Susan White, Parks and Recreation Director*

C. Ordinance Regarding Park Curfew Hours

Matters related to discussion and approval of an ordinance regarding Park Curfew Hours on the second and final reading. *Recommended Action: Approve ordinance designating park curfew hours on the second and final reading. Ms. Susan White, Parks and Recreation Director*

D. Quarterly Investment Report

Matters related to Council receiving the City's Quarterly Investment Report. *Recommended Action: Discuss and take any desired action. Mr. Harrison Nicholson, Treasurer*

E. Ordinance Adopting the 2019 Fee Schedule

Matters related to adoption of the City's Fee Schedule on second and final reading. *Recommended Action: Approve ordinance adopting the City's 2019 Fee Schedule on second and final reading. Ms. Marie Kalka, Finance Director*

F. Appointment to the Friends of West U Parks Fund, Inc.

Matters related to a resolution appointing Stephen Olson to Position 15 of the Friends of West U Parks Fund, Inc. *Recommended Action: Adopt resolution appointing Stephen Olson to Position 15 of the Friends of West U Parks Fund, Inc. Ms. Susan White, Parks and Recreation Director*

Councilmember Turner moved to approve the Consent Agenda as presented. Councilmember Higley seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Higley, Turner
Noes: None
Absent: None

11. Adjourn

With no other matters before Council, Councilmember Turner moved to adjourn the meeting at approximately 8:02 p.m. Councilmember Higley seconded the motion. **MOTION PASSED.**

Ayes: Sample, Burke, Higley, Turner
Noes: None
Absent: None

Prepared by: Thelma A. Gilliam, TRMC, City Secretary

Council Approval Date

AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF WEST UNIVERSITY PLACE, TEXAS

AGENDA OF:	November 5, 2018	AGENDA ITEM:	8B
DATE SUBMITTED:	October 31, 2018	DEPARTMENT:	Parks and Recreation
PREPARED BY:	Susan White	PRESENTER:	Susan White, Parks and Recreation Director
SUBJECT:	2019 Memorandum of Understanding between the City of West University Place and the West University Baptist Church		
ATTACHMENTS:	<ol style="list-style-type: none">1. 2019 Memorandum of Understanding2. Amended and Restated Memorandum of Understanding for West University Town Center Shared Parking (expires 2021)		
EXPENDITURE REQUIRED:	N/A		
AMOUNT BUDGETED:	N/A		
ACCOUNT NO.:			
ADDITIONAL APPROPRIATION REQUIRED:	N/A		
ACCOUNT NO.:	N/A		

EXECUTIVE SUMMARY

The City entered into its current MOU with West University Baptist Church (WUBC) in 2012. Prior to that, there had been an informal arrangement, beginning in 1996, which allowed the City to use the WUBC gymnasium to accommodate adult basketball leagues. In addition, the arrangement allowed patrons of the Community Building and Senior Center (CB/SC) to utilize the WUBC parking lots on the 3800 block of Milton. In return, the WUBC was provided additional classroom space for its Sunday-School programs. Although the City no longer offers adult basketball leagues, it continues to rely on use of the WUBC parking lot for patrons attending other activities at the CB/SC. Therefore, this proposed MOU provides for the continuation of the MOU currently in place, with no changes for 2019, as it has been beneficial and successful for both parties.

For informational purposes, WUBC pays the City a “market rate” janitorial service fee.

Note: The MOU between the WUBC and the city related to Town Center Shared Parking is attached for reference. When the MOU term ends in 2021, both MOU’s will be placed on the same review and renewal schedule.

RECOMMENDATION

Staff recommends that City Council authorize the City Manager to instruct the Director of Parks and Recreation to execute the attached 2019 Memorandum of Understanding between the City of West University Place and the West University Baptist Church.

**MEMORANDUM OF UNDERSTANDING FOR
WEST UNIVERSITY BAPTIST CHURCH – COMMUNITY BUILDING USE
(PROGRAM YEAR 2019 – January 1, 2019 through December 31, 2019)**

This memorandum of understanding ("MOU") is made and agreed to by: (1) the CITY OF WEST UNIVERSITY PLACE, TEXAS, a municipality located in Harris County, Texas ("West University") and (2) the WEST UNIVERSITY BAPTIST CHURCH (WUBC) Sunday School Program. West University and WUBC agree as follows:

Purpose; Program; Liaisons. The purpose of this MOU is to formalize agreements between West University and WUBC relating to the use of the Community Building/Senior Center in exchange for the WUBC allowing West University use of their Parking Lot #3 (reference attached Appendix C) Monday through Friday, from 7:30am until 5:30pm, with the exception of Thursday mornings the Program must meet the following criteria:

- (1) The Sunday School activities will take place within the West University Community Building/Senior Center, which includes the four (4) meeting and activity rooms, kitchen and restrooms at 6104 Auden.
- (2) The Program will involve every Sunday during the Program Year - 51 days annually.
- (3) The Program will provide supervised Sunday School activities for youthful and adult residents of West University and may provide these same supervised Sunday School activities for non-residents.
- (4) WUBC will be charged the standard Community Building/Senior Center rental rates for all use outside the approved 7:00am until 2:00pm Sunday use.
- (5) The Annual Fathers and Flashlights date is scheduled in the fall, typically October, and the space will not be available to the church for a Parks and Recreation Department event. West University will provide the date to the WUBC in a prompt fashion.

All Program activities must be conducted or officially sponsored by WUBC so that they will be covered by the liability insurance required by Appendix A, attached hereto and made part hereof.

Liaisons. Until changed by the City Council, the West University Liaison is its Senior Services Manager and the WUBC Liaison is the Facilities Manager. A total of two (2- 4A2) "master keys" to the Community Building/Senior Center will be issued to Associate Pastor, and one of the following keys 4A3, 4A4, 4A5 and 4A6 will also be issued.

- (1) Any lost or stolen keys must be reported to the West University Liaison immediately.
- (2) These key may not be duplicated – additional keys will be issued upon the mutual agreement between West University and WUBC.
- (3) These keys must be tendered to West University upon the termination of this agreement.

Program Year; Payments: WUBC will reimburse West University for the janitorial services that are scheduled to be rendered at the conclusion of their use of the building each Sunday. The fee is subject to change, but is currently **\$68.00 weekly**. West University will bill WUBC for the janitorial services on a quarterly basis. Billing dates: April 1st, July 1st, October 1st and January 1st. Payment is expected to be paid in full on or before the tenth of each identified month.

Other Terms, Rights And Duties. Other terms, rights and duties are set out in Appendices A and B, and in facility use permits, attached hereto and made part hereof.

Date. This MOU is signed and dated as of **October 22, 2018 and effective January 1, 2019 through December 31, 2019.**

WEST UNIVERSITY BAPTIST CHURCH

Address: _____

By: _____

Name: _____

Title: _____

CITY OF WEST UNIVERSITY PLACE

Address: _____

By: _____

Name: _____

Title: _____

ATTEST/SEAL

Name: _____

Title: _____

ATTEST/SEAL

Name: _____

Title: _____

(MOU Signature Page)

Appendix A
(To Accompany MOU)

LIAISON, COOPERATION, PERMITS, ETC.

A.1 *Routine Liaison.* (a) Each party shall designate in writing a person to act as its Liaison under this MOU (the initial Liaison is shown on the signature page of this MOU). Such person shall have authority to transmit notices, receive information and interpret that party's policies and decisions. Such authority shall not extend to changing this MOU or any other item approved by a governing body. Each party will make its Liaison available to meet and confer about matters relating to this MOU, at reasonable times and places.

(b) In addition, WUBC agrees to:

- (1) Attend an annual meeting between the City of West University Place (Senior Services Manager and the Parks and Recreation Director), and the WUBC Facilities Manager. The meeting will hosted by the City and conducted in the fall of each calendar year for the purpose of reviewing and updating the MOU, and
- (2) provide to the West University Liaison a list of the WUBC employees who are in charge for the Sunday School program at the time such information becomes available (the list should include addresses, email addresses, phone numbers, etc.).

A.2. *Special Events.* If WUBC considers sponsoring or providing a festival or similar event, or any mass gathering, in the West University Community Building/Senior Center, WUBC will cause the appropriate WUBC employee to: (i) notify the West University Liaison at the earliest practicable time and (ii) meet and confer with West University officials as may be reasonably requested. If West University facilities will be involved, a separate permit will be required for the special event.

A.3 *Information And Planning Data.* WUBC will provide information available to them that might assist West University in providing or planning parks and recreation facilities and activities.

A.4 *Basic Liability Coverage.* Except as provided below, WUBC will maintain liability insurance in effect at all times during the Program Year. If WUBC does not itself maintain such insurance, it shall cause the Sunday School program organization to maintain such insurance and list WUBC (and its officers agents and employees) as additional insured parties. Each policy must list West University (and its officers, agents and employees) as additional insured parties with respect to activities under this MOU. The insurance must have limits of at least **\$1,000,000 per occurrence / \$2,000,000.00 aggregate**. "Additional insured" coverage must include general liability risks, including both on-going and completed operations. Individual permits (see the attached form) may require additional coverages and features.

A.5 *Reserved*

A.6 *Permits.* (a) The City agrees to issue the attached permit to WUBC to use the Community Building/Senior Center for Program activities during the Program Year.

(b) From time to time, WUBC may request additional permits, including permits that WUBC would like to have included in a future MOU for an upcoming Program Year. Such requests should be made by letter submitted to the West University Liaison at the earliest practicable time. In the case of permits for the use of the Community Building/Senior Center, requests for an upcoming year should:

- (1) Fall/Winter schedules due on or before September 1 of each year, and the Spring/Summer schedules due on or before January 1 of each year.
- (2) Identify the proposed uses, including the days and times requested,
- (3) Provide additional information as the West University Liaison may reasonably request.

(c) Permits will require the permittee to maintain the Community Building/Senior Center, but the permittee may decline to accept Permits if the terms are unacceptable to the permittee or if any changes made to a Permit by the West University Liaison under (d) below are unacceptable.

(d) All such permits require approval and signature by the City and the permittee. The West University Liaison is authorized to sign such permits and to make reasonable changes in the permits, provided they remain revocable by the City.

(e) Whether included in a permit or not, the permittee agrees to:

- (1) observe and comply with the City's ordinances, rules and regulations applicable to each facility used by WUBC; and
- (2) provide a written copy to each WUBC employee assigned to work at this facility.

A.8 *Solid Waste; Recycling.* West University will provide routine, residential-level solid waste collection from activities of WUBC. WUBC will make every reasonable effort to recycle all materials used in facilitating the programs and activities they conduct at the Community Building/Senior Center.

A.9 *Termination of Prior Agreements.* All prior agreements between the parties relating to Program activities are terminated by agreement, effective as of the date of this MOU. This does not affect any duties required to be performed before that date.

Appendix B
(To Accompany Interlocal Cooperation MOU)

MISCELLANEOUS PROVISIONS

B.1 *Force Majeure*. Should any party be delayed or hindered in the performance of any of its obligations or duties under this MOU because of a force majeure, then the party so delayed or hindered shall be excused from such delay or hindrance to the extent that it is caused by the force majeure. The term "force majeure", as used in this MOU, includes, without limitation of the generality thereof: acts of God, strikes, lockouts, other personnel disturbances or job actions, acts of the public enemy, laws, regulations, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, breakage or accidents to machinery or equipment, shortages of materials, equipment or supplies, or any other limitations of any party, whether similar to those enumerated or otherwise, which are not within the reasonable control of the party claiming such inability. If a party is affected by strike, lockout or other personnel disturbance or job action, this MOU does not compel the party to acquiesce to any demand or position of any personnel or other party, it being understood that the strike, lockout, disturbance or action would be a force majeure for the duration thereof.

B.2 *Non-Parties*. This MOU shall bind and benefit the parties only (except the agreement to cover West University's officers, agents and employees as additional insured parties). It shall not confer any rights or benefits upon any other party, nor may any other party enforce this MOU or sue for any damages under this MOU.

B.3 *Remedies Limited; Termination*. (a) No party shall terminate its performance under this MOU because of a breach by the other party, unless: (i) the terminating party first delivers an effective notice of breach to the breaching party, (ii) the breach is not cured by the end of the cure period, and (iii) on or before the thirtieth day following the last day of the cure period, the terminating party sends an actual notice of termination setting the final termination date, which date may not be sooner than the tenth day following receipt of the actual termination notice.

(b) To be effective, a notice of breach must: (i) identify the breach, giving enough details for the notified party to understand, investigate and cure, (ii) state the sections and exact provisions of this MOU which have been breached, (iii) state all means of curing the breach known to the party sending the notice, and (iv) designate a cure period of at least 30 days following receipt of the notice of breach. If a breach has already occurred, or if it is continuing in nature, it can be cured by taking reasonable action to prevent a recurrence.

(c) If a dispute or disagreement arises out of this MOU, the parties agree to use reasonable best efforts to settle it in a just and equitable manner, recognizing their mutual interests. They agree to pursue the following steps:

- (1) They will meet and confer within ten days of a request to do so.
- (2) If no settlement is reached, they will next exchange lists of possible approaches to resolve the dispute or disagreement. The exchange will be simultaneous, and it must occur within ten days following a request. Each party will list as many approaches as it can reasonably imagine that would be agreeable. The parties are encouraged to be creative and flexible in developing possible approaches.

- (3) Within ten days following the exchange, they will again meet and confer. If no settlement is reached, any party may submit the matter for mediation, and all affected parties will participate and try in good faith to settle. Unless they otherwise agree, the mediation will be administered by the American Arbitration Association under its Commercial Mediation Rules.

Neither party may commence legal action to interpret or enforce this MOU against the other party until the commencing party has followed the mediation procedures set out above. This does not prohibit a party from filing such proceedings to prevent the running of a statute of limitations or other tolling rule, provided that the party continues pursuing the steps required by this subsection.

(d) **WEST UNIVERSITY SHALL NEVER BE OBLIGATED TO PAY ANY MORE MONEY--IN CONNECTION WITH THIS MOU OR THE PROGRAM--THAN THE AMOUNT CERTIFIED AS BUDGETED AND UNENCUMBERED ON THE SIGNATURE PAGE. THIS APPLIES TO AND LIMITS ALL PAYMENTS, CLAIMS, LIABILITIES, LOSSES AND DAMAGES, REGARDLESS OF CAUSE OR ORIGIN, WHETHER FROM CONTRACT OR TORT, PERFORMANCE OR NONPERFORMANCE, OR FROM STRICT LIABILITY OR NEGLIGENCE, ACTIVE OR OTHERWISE, OF WEST UNIVERSITY OR ITS OFFICERS, AGENTS OR EMPLOYEES.**

(e) Except as limited by this MOU, all remedies at law or in equity shall remain available to the parties.

B.4 Entire Agreement. This MOU contains all the agreements of the parties relating to the subject matter and Program Year hereof, and there are no binding agreements, whether written or oral, among the parties relating to the subject matter and Program Year hereof, except as stated in this MOU. This MOU is the full and final expression of their agreement.

B.5 Waiver; Breaches. No waiver or waivers of any breach (or any series of breaches) by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches of any kind, under any circumstances. As used in this MOU, "breach" includes default and all other circumstances in which a party does not perform as required by this MOU.

B.6 Notices and Addresses. (a) Unless otherwise provided in this MOU, any notice, communication, request, reply, or advice (in this MOU, severally and collectively called "notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given: (i) by depositing the same in the United States mail, postpaid as registered or certified mail with return receipt requested, addressed to the party to be notified at the address required by this MOU, or (ii) by physically delivering the same to the chief administrative officer or Liaison of such party. Notice deposited in the mail in the manner described shall be presumed to be received on the third business day following the day it is so deposited. This presumption is rebuttable.

(b) For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as set forth on the signature page. The parties shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify as its address any other address by giving at least fifteen days' written notice of the changed address to each other party.

B.7 *No Partnership.* This MOU shall never be construed to create any partnership or joint venture or to impose any partnership or venture duties upon any of the parties. Each party specifically reserves the right to perform its duties and services by techniques, means and methods of its own choosing, and to cause them to be provided, either alone or in conjunction with other persons or entities. Tri-Sports shall be an independent contractor controlling the details, means, techniques and methods of its work, it being agreed that West University will look only to the results prescribed by this MOU.

B.8 *Severability.* The provisions of this MOU are severable, and if any provision or part of this MOU or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this MOU to other persons or circumstances shall not be affected thereby.

B.9 *Governing Law; Venue.* This MOU shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties hereunder shall be performable in Harris County, Texas. Venue shall lie in the appropriate state court in and for Harris County, Texas.

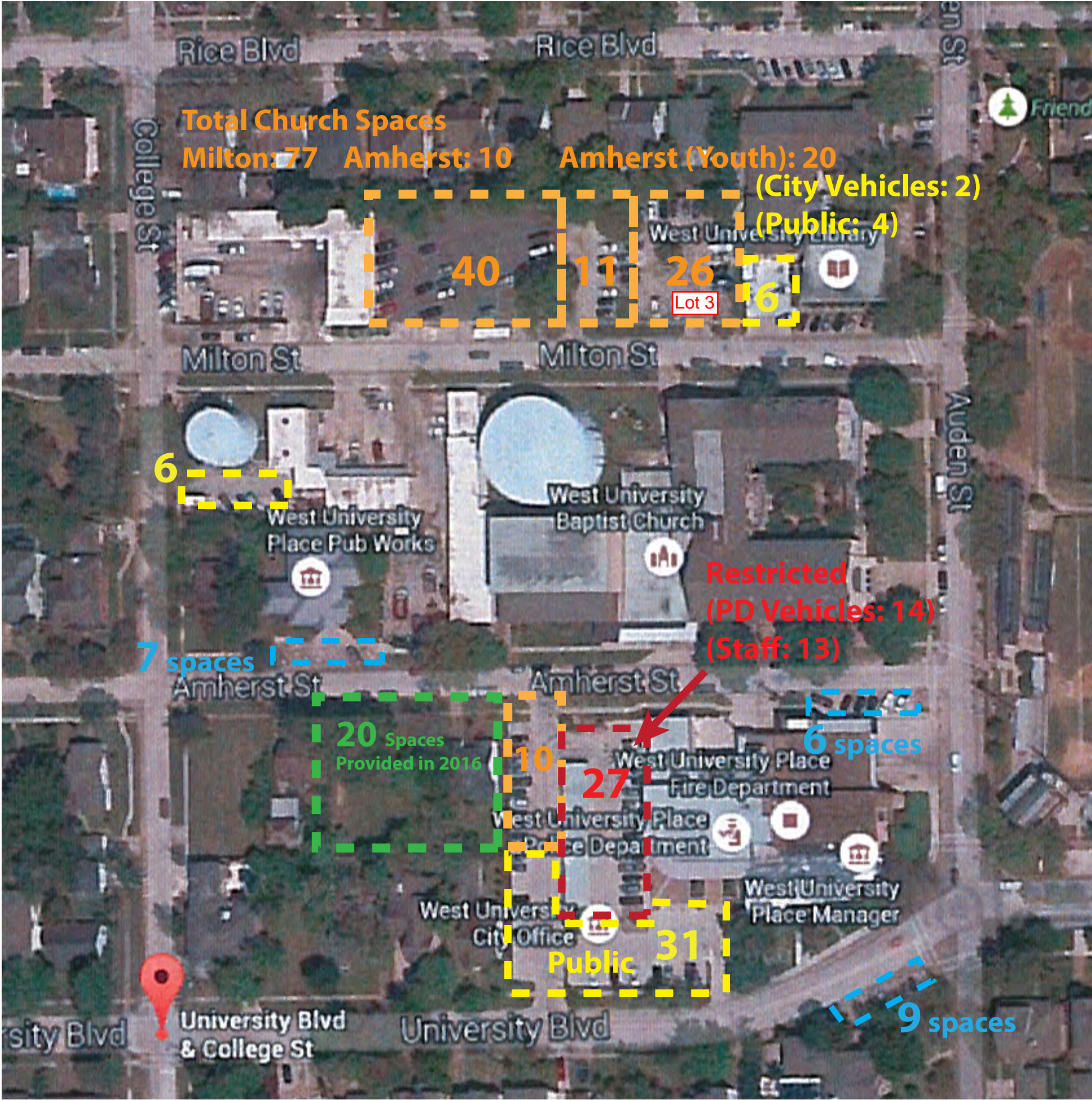
CITY CENTER MAP - 2016

CHURCH PARKING:

Milton St:	77
Amherst St:	10
Amherst St (Youth)	20
TOTAL:	107

CITY PARKING:

City Hall Restricted:	27
City Hall Public:	31
Comm. Bldg. Public:	4
Comm. Bldg. Restrict:	2
PW Admin Restrict:	6
Total:	70
Public:	35
Restricted:	35



PERMIT

FACILITIES:	Community Building/Senior Center, 6104 Auden, owned by CITY OF WEST UNIVERSITY PLACE, TEXAS ("West University).
PERMITTEE:	West University Baptist Church ("Permittee")
TERM OF PERMIT:	From January 1, 2019 through December 31, 2019, unless sooner terminated as provided herein.
PRIORITY USE AREAS:	All meeting and activity rooms, kitchen, restrooms and hallways/general congregant areas.
PRIORITY USE HOURS:	Every Sunday from 7:00am until 2:00pm
	EXCEPTIONS: City Functions such as Fathers and Flashlights take priority!
PERMITTED USE:	<p>Subject to all conditions of this Permit, and subject to West University's ordinances, rules and regulations, as amended now or later, West University authorizes the Permittee to use the Facilities during the term of this Permit (all as defined above), for the following activity only: WUBC Sunday School program.</p> <p>Permittee's use of the Facilities is exclusive. City reserves the right to schedule the use of the facilities for the purpose of city related special events and activities. All such use will be negotiated a minimum of sixty (60) days in advance, as to not disrupt the normal WUBC activities. However, Permittee shall have first-priority use (as to other authorized users, casual users or unauthorized users) of the Priority Use Area during the Priority Use Hours. All other special events require a separate permit.</p>
PERMITTED USE:	Permittee must provide adult instructors with appropriate training, to be present and on duty, supervising the participants. The number of instructors must comply, at all times, with recommendations of the governing body of the WUBC.
IMPROVEMENTS:	Any facility improvements must be pre-approved by the West University Liaison prior to any improvements being facilitated.

PERMIT

MAINTENANCE:	Permittee shall perform the following maintenance activities: Permittee shall be responsible for the general care and maintenance of the facility, all furniture and fixtures in the facility that they incorporate during the course of their use, properly dispose of all waste generated by their use and reporting any maintenance issues involving the kitchen, restrooms, lighting systems and HVAC systems to the West University Liaison.
---------------------	---

**GENERAL
CONDITIONS:**

The Permittee shall abide by West University's ordinances, rules and policies for the Facilities, as amended from time to time, and shall cause all participants in its activities to do so. Permittee is responsible for all persons it invites or admits to the Facilities, and Permittee will pay for any losses or damages caused by them (or by Permittee). Permittee has inspected the Facilities and accepts it "as is." Permittee shall not cause any unreasonable adverse effect on others, including, for example: effects of noise, vibration, odors, fumes, visual intrusions, flooding, congestion, vehicular traffic, and "spillover" parking of vehicles. Permittee shall not alter the Facilities, except as authorized in this Permit (see improvements and maintenance sections). Permittee shall not cause any nuisance or health hazard. This permit does not grant any property right or vested right of any kind. Either party may end the Term of this Permit at any time, by giving written notice to the other party. This permit is not assignable.

**OTHER
CONDITIONS:**

This permit is subject to and governed by the Memorandum of Understanding between West University and WUBC, and all of its provisions are incorporated herein by this reference. This permit may only be amended in writing, signed and approved by each party. All provisions continue in effect past termination or expiration of the Term of this permit.

ATTACHMENTS:

PERMIT

SIGNATURES:

WEST UNIVERSITY BAPTIST CHURCH
Address: _____

CITY OF WEST UNIVERSITY PLACE
Address: _____

By: _____
Name: _____

Title: _____

By: _____
Name: _____

Title: _____

ATTEST/SEAL: _____
Name: _____

Title: _____

ATTEST/SEAL: _____
Name: _____

Title: _____

Liberty Mutual Surety 02581
Office - Houston
PO Box 40914
HOUSTON, TX 77240-9989

**Contract Bond
Status Query**



Phone: 972-233-9588
Fax: 866-547-6203

Liberty Mutual Surety

**CITY OF WEST UNIVERSITY & THE CITY OF SOUTHSIDE PLACE
CITY SECRETARY'S OFFICE 3800
UNIVERSITY BOULEVARD
W. UNIVERSITY PL, TX 77005**

Date of Request: 4/5/2011

In order to allow us to monitor the progress of our contractor, please complete and return this form. Your response will not prejudice your rights or affect our liability under our bond(s) referred to below. We enclose a prepaid return envelope for your use.

Bond Number: 58S003268 **Contract Price:** \$11,140,490.00 **Inception Date:** 10/30/2007
Cross Reference Bond Number: 64610860000
Contract Description: COLLEGE AVE. & BELLAIRE BLVD. - PAVING, DRAINAGE & UTILITYIMPROVEMENTS

Our Bond On Behalf Of: TOTAL CONTRACTING LIMITED

**Bond Executed In The
Following Company:** SAFECO INSURANCE COMPANY OF AMERICA

Signed Tim Mikolajewski
Tim Mikolajewski
President - Liberty Mutual Surety

1. HAS CONTRACT BEEN COMPLETED? _____

2. IF COMPLETED PLEASE STATE: _____

a. Date of acceptance _____

b. Total amount of completed contract _____

3. IF NOT COMPLETED PLEASE STATE: _____

a. Probable completion date _____

b. Amount paid contractor to date _____

c. Amount withheld as retained percentage _____

4. HAS WORK PROGRESSED SATISFACTORILY? _____

5. ARE THERE ANY UNSATISFIED CLAIMS OR LIENS ON FILE? _____

REMARKS: _____

Dated: _____

Signed _____
Name _____
Title _____
Phone: _____ Fax: _____

**AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING
FOR WEST UNIVERSITY TOWN CENTER SHARED PARKING**

This memorandum of understanding ("MOU") is made and agreed to by: (1) the CITY OF WEST UNIVERSITY PLACE, TEXAS, a municipality located in Harris County, Texas ("City") and (2) the WEST UNIVERSITY BAPTIST CHURCH, a Texas non-profit corporation ("WUBC"). In consideration of the mutual promises and obligations of the parties set forth in this MOU, the City and WUBC agree as follows:

Purpose; Parking. The purpose of this MOU is to provide for shared public parking in the West University "town center" area, near Auden, Milton and Amherst Streets, West University Place, Texas 77005. In general, and subject to agreed-upon hours and limitations, each party will allow members of the public to park motor vehicles on its parking lots during certain hours. See Appendices A and C. It is the intention of the parties that this MOU be filed in the Harris County real estate records for the purpose of recording the relative rights, preferences, and terms affecting the parties and the parcels of land affected by this MOU.

Date; Term. This MOU is signed and dated as of March 31, 2011. It shall take effect immediately and remain in effect until one party terminates by giving notice to the other party at least one year prior to the date set for termination with respect to all Lots save and except Lot 8 (rev) which shall be leased for a term of 10 years, with termination only upon mutual agreement of both parties with respect to Lot 8 (rev). In certain circumstances, this MOU may be terminated with regard to Lots other than Lot 8(rev) without giving such notice and/or termination may result in the payment of costs by one party to another; see Appendix A, B and D.

Liaisons. Until changed by the respective City Council, the City Liaison is its Public Works Director, and the WUBC Liaison is its Executive Pastor.

Other Terms, Rights And Duties. Other terms, rights and duties are set out in Appendices A, B and C, which are attached and made a part of this MOU.

WEST UNIVERSITY BAPTIST CHURCH

Address:


6218 Auden Street
West University Place, TX 77005

CITY OF WEST UNIVERSITY PLACE

Address:

3800 University Boulevard
West University Place, TX 77005

By:



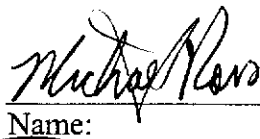
Name:

M. Gary Pennington

Title:

Trustee

By:



Name:

Michael Ross

Title:

City Manager

ATTEST/SEAL:

Name: Connie Harper

Title: Secretary

ATTEST/SEAL:

Name: Verma A. Leon

Title: City Secretary

(MOU Signature Page)

Appendix A
(To Accompany MOU)

PARKING, LIAISON, COOPERATION, ETC.

A.1 Parking Lots, Uses, Hours, Etc.

(a) During the term of this MOU, the City will allow the public (including those employed at or attending WUBC or City facilities) to use the following parking lots during the hours indicated:

Lots: 4 and Consolidated

Hours: Sundays 7 AM to 11 PM and Wednesdays from 5 PM to 11 PM

(b) During the term of this MOU, the WUBC will allow the public (including those employed at or attending City or WUBC facilities) to use the following parking lots during the hours indicated:

Lots: 1, 2, and 9

Hours: Monday through Saturday from 7 AM to 11 PM,
 except Wednesdays from 5 PM to 11 PM

(c) Either party may restrict parking on its lots temporarily, because of ---
 ---emergency operations (for the duration of the emergency)
 ---construction or repairs (for time reasonably needed)
 ---mass gatherings not regularly scheduled on a weekly basis (each party must give the other party a minimum of 30 days notice to restrict lots for such mass gatherings, whenever practicable).

(d) With respect to the Lots specifically identified in Section A.1 of the Appendix A, either party, by notifying the other party at least 30 days in advance, may remove one or more individual areas from this MOU permanently, if the areas are sold, leased, built upon or converted to a non-public-parking use and providing these uses are compliant with all applicable Zoning Ordinances and Regulations.

(e) All use by the public, as provided above, shall be on an "open" basis, with no spaces being reserved or restricted, except for: (i) marked handicapped spaces, (ii) marked spaces for short-time parking only (e.g., "30-minute parking"), (iii) marked spaces for senior staff, public safety and similar personnel, not to exceed 5% of the total number of that party's spaces (in all of its lots save and except those areas reserved and necessary for use by Public Safety) covered by this MOU, (iv) at least 15 spaces in Lot No. 1, which shall be reserved for City employees only during Public Works Department working hours, and (v) all of Lot No. 1, which may be reserved and used by the City occasionally for Public Works special events (recycling, heavy trash collection, etc.). These events must be scheduled with the WUBC Liaison at least 60 days in advance. During the hours specifically identified in A.1 (a) the City agrees to make all efforts to restrict its use to those areas identified for Public Safety use.

(f) This MOU does not create any easements, but it does create property rights affecting the parcels of land covered hereby, with the intention that such property rights remain in full force and effect, unless otherwise terminated in accordance with this MOU.

(g) This MOU contemplates ordinary, temporary parking for light passenger vehicles only. It does not authorize commercial use, oversize parking, storage, repair, sales or other such uses. *Exception:* The City may reserve and use Lot No. 1 occasionally for Public Works special events (recycling, heavy trash collection, etc.). These events must be scheduled with the WUBC Liaison at least 60 days in advance.

A.2 *Routine Liaison.* Each party shall designate in writing a person to act as its Liaison under this MOU (the initial Liaison is shown on the signature page of this MOU). Such person shall have authority to transmit notices, receive information and interpret that party's policies and decisions. Such authority shall not extend to changing this MOU or any other item approved by a governing body. Each party will make its Liaison available to meet and confer about matters relating to this MOU, at reasonable times and places.

A.3 *Special Events.* If WUBC or City considers sponsoring or providing a tournament, festival or similar event, or any mass gathering beyond the scope of either parties' regularly scheduled mass gatherings, in the town center area, it agrees to: (i) notify the respective Liaisons at the earliest practicable time, (ii) meet and confer with officials from each respective party as may be reasonably requested, and (iii) consider special requests beyond the scope of the schedule of this agreement.

A.4 *Information And Planning Data.* Each party will provide information available which might assist the other party in providing or planning public parking or special church related parking.

A.5 *Basic Liability Coverage.* Each party shall maintain in effect liability coverage for its lots while they are subject to this MOU. Coverage may be provided by commercial insurance or by multi-party risk pool. The coverage must be at least \$1,000,000 per occurrence (for bodily injury or death). Neither party assumes responsibility for occurrences on the property of the other party.

A.6 *Termination of Prior Agreements.* All prior parking agreements between the parties relating to activities are terminated by agreement, effective as of the date of this MOU. This does not affect any duties required to be performed before that date.

A.7 *Maintenance of Parking Lots:* Each party shall be responsible for maintenance of its own property. *Exception:* The City will provide ordinary maintenance (including but not limited to pothole-filling and re-striping) at Lot 1, 8 (rev) and 9 to the extent determined from time to time by the City's Public Works Director. If the WUBC is not satisfied with the maintenance so provided, WUBC may so notify the City, specifying any additional or different maintenance desired by WUBC. If the City does not provide the additional or different maintenance within the following 60 days, WUBC may remove Lot No. 1 or 9 from this MOU permanently, by so notifying the City. Removal of Lot No. 1, or 9 is the sole remedy related to maintenance relative to Lots 1 and 9; any remedy to maintenance on Lot 8 (rev) shall require at least 12 months notification and the mutual agreement of both parties to this MOU consistent with section A.8 below.

A.8 Lease agreement, Improvements and Amortization of Improvements on Lots 8 (Rev) and Lot 9.

(a) **Properties Leased.** Both Lot 8 (rev) and Lot 9 as shown in Appendix C, are hereby leased to the City for \$1.00 per year in exchange for the City's agreement to make certain improvements on Lot 8 (rev) and Lot 9, together with the City's agreement to grant WUBC the privilege of using all improvements on Lot 8 (rev) and Lot 9 made by the City as set forth herein above, which improvements will be constructed, completed, and made available for use at the sole cost of the City. The City hereby gives assurance to WUBC that it has the funds for the parking improvements on Lots 8(rev) and Lot 9, and will pursue all reasonable steps necessary to complete the improvements in a timely manner, as required by this provision.

(b) **WUBC Rights of Termination.** If the City fails to complete the parking improvements on Lot 8(rev) within 90 days or Lot 9 within 180 days of the date this agreement is signed by WUBC, the lease of the lot on which improvements are not constructed by the City may be terminated upon written notice to the City by WUBC, with no cost to WUBC. Further if the City elects to remove the City Consolidated Lot from this agreement, WUBC shall have the right to terminate the lease for Lot 8 (rev) or Lot 9 at its sole discretion and shall have no financial or other obligations to the City for Lot 8 (rev) or Lot 9. Additionally, if WUBC elects to remove the Lot 9 from this agreement subsequent to the parking improvements being made and prior to a term of ten (10) years, the city shall have the right of reimbursement as set forth herein.

(c) **City's Right of Reimbursement.** Except under circumstances where the City has failed to timely complete the required improvements to either Lot 8 (rev) or Lot 9, and except under circumstances where the City elects to remove the City Consolidated Lot from this agreement, in the event WUBC elects to remove Lot 9 from this agreement, WUBC agrees to pay to the City an amount equal to the unamortized portion of the costs of improvement for Lot 9, to be paid upon termination, with appropriate written notice as previously mentioned in this document. The amortization amount shall be calculated on a straight-line cost only method with an amortization term of ten (10) years and an original cost basis not to exceed \$50,000.

(d) **City's Right of Termination.** In the event that the City terminates this agreement, or elects to remove the City Consolidated Lot from this agreement, all financial obligations of WUBC specific to Lot 8 (rev) and Lot 9 will also terminate.

(e) **Intended Period of Lease.** Subject to the parties' rights of termination, as set forth herein, WUBC and the City agree, due to the critical need for required parking for both parties, that the use of Lot 8 (rev) and Lot 9 and the improvements are intended to be leased to the City for a term of ten (10) years, except under circumstances where the City has failed to complete the required improvements on Lot 8 (rev) or Lot 9 within the time period required by this agreement, and except under circumstances where the City has elected to remove the City Consolidated Lot from this agreement.

(f) **Minimum Notice of Termination.** Subject to the parties' rights of termination, as set forth herein, once the City completes construction of the improvements on Lot 8 (rev) and Lot 9 in a timely manner, any termination of this agreement relative to Lot 9 shall require at least 12 months notification or the mutual agreement of both parties to this MOU, and any termination of this agreement relative to Lot 8 (rev) shall require at least 12 months notification and the mutual agreement of both parties to this MOU, except under circumstances where the City has failed to complete the required improvements on Lot 8 (rev) or Lot 9 within the time period

required by this agreement, and except under circumstances where the City has elected to remove the City Consolidated Lot from this agreement.

(g) Ownership of Improvements. WUBC shall be deemed to own all improvements upon Lot 8 (rev) and Lot 9, subject only to the City's conditional right of reimbursement under certain circumstances set forth in this agreement.

(h) Subsequent Changes and Demolition. If, during the term of this agreement, either the City or WUBC wishes to make any changes to or demolish the improvements on such lots for any reason, the prior written consent of the other party shall be required. In the event the City or WUBC proposes to make any changes to or demolish the improvements on such lots for any reason during the term of this agreement, the parties must first agree in writing, and mutually agree with regard to which party will be responsible for the direct and indirect costs of the changes or demolition (and associated drainage requirements). Otherwise, the party proposing the changes or demolition shall be responsible for the direct and indirect costs.

Appendix B
(To Accompany MOU)

MISCELLANEOUS PROVISIONS

B.1 *Force Majeure.*

(a) Should any party be delayed or hindered in the performance of any of its obligations or duties under this MOU because of a force majeure, then the party so delayed or hindered shall be excused from such delay or hindrance to the extent that it is caused by the force majeure. The term "force majeure", as used in this MOU, includes without limitation of the generality thereof: acts of God, strikes, lockouts, other personnel disturbances or job actions, acts of the public enemy, laws, regulations, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, breakage or accidents to machinery or equipment, shortages of materials, equipment or supplies, or any other limitations of any party, whether similar to those enumerated or otherwise, which are not within the reasonable control of the party claiming such inability. If a party is affected by strike, lockout or other personnel disturbance or job action, this MOU does not compel the party to acquiesce to any demand or position of any personnel or other party, it being understood that the strike, lockout, disturbance or action would be a force majeure for the duration thereof.

B.2 *Non-Parties.* This MOU shall bind and benefit the parties only. It shall not confer any rights or benefits upon any other party, nor may any other party enforce this MOU or sue for any damages under this MOU.

B.3 *Remedies Limited; Termination.*

(a) No party shall terminate its performance under this MOU because of a breach by the other party, unless: (i) the terminating party first delivers an effective notice of breach to the breaching party, (ii) the breach is not cured by the end of the cure period, and (iii) on or before the thirtieth day following the last day of the cure period, the terminating party sends an actual notice of termination setting the final termination date, which date may not be sooner than the tenth day following receipt of the actual termination notice.

(b) To be effective, a notice of breach must: (i) identify the breach, giving enough details for the notified party to understand, investigate and cure, (ii) state the sections and exact provisions of this MOU which have been breached, (iii) state all means of curing the breach known to the party sending the notice, and (iv) designate a cure period of at least 30 days following receipt of the notice of breach. If a breach has already occurred, or if it is continuing in nature, it can be cured by taking reasonable action to prevent a recurrence.

(c) If a dispute or disagreement arises out of this MOU, the parties agree to use reasonable best efforts to settle it in a just and equitable manner, recognizing their mutual interests. They agree to pursue the following steps:

- (1) They will meet and confer within ten days of a request to do so.

(2) If no settlement is reached, they will next exchange lists of possible approaches to resolve the dispute or disagreement. The exchange will be simultaneous, and it must occur within ten days following a request. Each party will list as many approaches as it can reasonably imagine that would be agreeable. The parties are encouraged to be creative and flexible in developing possible approaches.

(3) Within ten days following the exchange, they will again meet and confer. If no settlement is reached, any party may submit the matter for mediation, and all affected parties will participate and try in good faith to settle. Unless they otherwise agree, the mediation will be administered by the American Arbitration Association under its Commercial Mediation Rules.

Neither party may commence legal action to interpret or enforce this MOU against the other party until the commencing party has followed the mediation procedures set out above. This does not prohibit a party from filing such proceedings to prevent the running of a statute of limitations or other tolling rule, provided that the party continues pursuing the steps required by this subsection.

(d) Except as limited by this MOU, all remedies at law or in equity shall remain available to the parties.

B.4 *Entire Agreement.* This MOU contains all the agreements of the parties relating to the subject matter and Program Year hereof, and there are no binding agreements, whether written or oral, among the parties relating to the subject matter and Program Year hereof, except as stated in this MOU. This MOU is the full and final expression of their agreement.

B.5 *Waiver; Breaches.* No waiver or waivers of any breach (or any series of breaches) by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches of any kind, under any circumstances. As used in this MOU, "breach" includes default and all other circumstances in which a party does not perform as required by this MOU.

B.6 *Notices and Addresses.*

(a) Unless otherwise provided in this MOU, any notice, communication, request, reply, or advice (in this MOU, severally and collectively called "notice") herein provided or permitted to be given, made or accepted by any party to any other party must be in writing and may be given: (i) by depositing the same in the United States mail, postpaid as registered or certified mail with return receipt requested, addressed to the party to be notified at the address required by this MOU, or (ii) by physically delivering the same to the chief administrative officer or Liaison of such party. Notice deposited in the mail in the manner described shall be presumed to be received on and the third business day following the day it is so deposited. This presumption is rebuttable.

(b) For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as set forth on the signature page. The parties shall have the right from time to time and at any time to change their respective addresses, and each shall have the right to specify as its address any other address by giving at least fifteen days' written notice of the changed address to each other party.

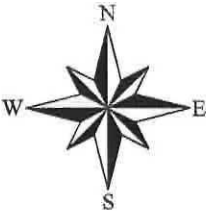
B.7 *No Partnership.* This MOU shall never be construed to create any partnership or joint venture or to impose any partnership or venture duties upon any of the parties. Each party specifically reserves the right to perform its duties and services by techniques, means and methods of its own choosing, and to cause them to be provided, either alone or in conjunction with other persons or entities.

B.8 *Severability.* The provisions of this MOU are severable, and if any provision or part of this MOU or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this MOU to other persons or circumstances shall not be affected thereby.

B.9 *Governing Law; Venue.* This MOU shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties hereunder shall be performable in Harris County, Texas. Venue shall lie in the appropriate state court in and for Harris County, Texas.

West University Parking Lots

APPENDIX C
(To Accompany MOU)



Appendix D

Amortization Table for Lot 9

Total Cost: Not to Exceed	\$50,000.00	
	<u>Yearly Amortization*</u>	<u>Remaining unamortized balance</u>
Year One	5,000.00	\$45,000.00
Year Two	5,000.00	\$40,000.00
Year Three	5,000.00	\$35,000.00
Year Four	5,000.00	\$30,000.00
Year Five	5,000.00	\$25,000.00
Year Six	5,000.00	\$20,000.00
Year Seven	5,000.00	\$15,000.00
Year Eight	5,000.00	\$10,000.00
Year Nine	5,000.00	\$5,000.00
Year Ten	5,000.00	\$0.00

* Amortization: Straight Line Cost Only Basis